IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 9263 of 2007
With
CRIMINAL MISC.APPLICATION No. 9809 of 2007

For Approval and Signature:
HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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CHANDU ALIYAS KALU VIRAJI DALWADI - Applicant(s)
Versus
STATE OF GUJARAT - Respondent(s)

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Appearance :
MR MP SHAH for Applicant(s) : 1,MS. KRUTI M SHAH for Applicant(s) : 1,
MR KT DAVE, ADDL. PUBLIC PROSECUTOR for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 20/09/2007

COMMON ORAL JUDGMENT

1. As common question of law and facts arise and both these matters are interconnected with each

other, they are being disposed of by this common judgment and order.

2. In both these applications, the applicant herein – original accused has prayed for an appropriate order quashing and setting aside the order passed by the learned Additional Sessions Judge & Special Judge, Viramgam in closing the right of cross-examination of the witness Prahladbhai Mohanbhai Dalwadi by the accused in Sessions Case No.5 of 2007. The applicant – original accused has also prayed for an appropriate order quashing and setting aside the order of the learned Additional Sessions Judge & Special Judge, Viramgam in exhibiting two xerox documents as Exhs.24 and 25 in the absence of the advocate of the accused.

3. It appears from the record that one Prahladbhai Mohanbhai Dalwadi was examined on behalf of the prosecution at Exh.23 on 3.8.2007, however, as the learned advocate appearing for the accused was sick on that date, he could not remain

present and even a pursis was also submitted before the learned trial Court to the effect that the learned advocate for the applicant has fallen sick and is not in a position to remain present. The learned Additional Sessions Judge & Special Judge, Viramgam continued with the examination-in-chief and further recorded that as the learned advocate appearing for the accused is absent and when the accused is asked to cross-examine, he has said NO and therefore, his right to cross-examine the said witness has been closed. It also appears from the record that during the examination-in-chief of the said witness i.e. Prahladbhai Mohanbhai Dalwadi, two documents i.e. xerox copies were produced and they were exhibited as Exhs.24 and 25 in absence of the learned advocate appearing for the applicant – original accused. It is the contention on behalf of the applicant – original accused that both the aforesaid documents are the xerox copies, they could not have been exhibited by the learned trial Court, more particularly, in absence of the learned advocate

appearing for the accused and / or without giving any opportunity to the learned advocate appearing for the applicant. Under the circumstances, the learned advocate appearing for the applicant has requested to allow present applications by further submitting that the applicant is ready and willing to pay the costs of the witness, who is to be cross-examined as he is to be called again.

4. Shri K.T.Dave, learned APP has requested to pass an appropriate order considering the facts and circumstances of the case, more particularly, the sickness of the learned advocate appearing for the applicant on 3.8.2007.

5. Heard the learned advocates appearing for the respective parties.

6. It is not in dispute that on 3.8.2007 when witness - Prahladbhai Mohanbhai Dalwadi was examined, the learned advocate appearing for the applicant had filed sick-note as he was sick and

therefore, the witness could not be cross-examined. In the facts and circumstances of the case, it appears that the learned trial Court, while adjourning the matter, ought to have given one opportunity to the applicant to cross-examine the said witness. By not giving an opportunity to the applicant to cross-examine the witness, the valuable right of the applicant has been taken away, however, Shri K.T.Dave, learned APP is justified in making statement that if the said witness is to be cross-examined, he is to be called again and he has to bear expenses and the applicant should saddle with the costs and he has to pay the costs. Under the circumstances, the order passed by the learned Additional Sessions Judge & Special Judge, Viramgam in closing the right of cross-examination of the witness Prahadbhai Mohanbhai Dalwadi by the accused in Sessions Case No. 5 of 2007 is hereby quashed and set aside on condition that applicant to deposit Rs.750/- with the learned trial Court towards the expenses / costs of the said witness who is to

be called again for the purpose of cross-examination and the learned Additional Sessions Judge & Special Judge, Viramgam is directed to give one opportunity to the applicant to cross-examine the said witness - Prahladbhai Mohanbhai Dalwadi.

7. So far as exhibiting of two xerox documents as Exhs.24 and 25 is concerned, as the same has been exhibited without giving any opportunity to the learned advocate appearing for the applicant and as grievance / objection raised on behalf of the applicant that they being xerox copies, the same could not have been exhibited is concerned, it is ordered that the said documents – Exhs.24 and 25 are to be de-exhibited and an opportunity is to be given by the learned trial Court to the applicant before exhibiting the said documents and to that extent the order passed by the learned Additional Sessions Judge & Special Judge, Viramgam in exhibiting two xerox documents as Exhs.24 and 25 is hereby quashed and set aside and the learned trial Court is

directed to give an opportunity to the applicant before exhibiting the said documents.

8. Rule is made absolute to the aforesaid extent in each of the application. Direct Service is permitted.

[M.R.Shah, J.]

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